IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 300 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARDAR AKUL ALAM S KHAN

Versus

MOTILAL CHUNILAL NI CO.

Appearance:

1. Civil Revision Application No. 300 of 1983

Petitioner absent.

MR SH SANJANWALA for Respondent No. 1

MR HM CHINOY for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/08/2002

ORAL JUDGEMENT

1. Feeling aggrieved by the judgment and order dated 30th October, 1982 passed by the learned Joint Judge, Surat in Regular Civil Appeal No.275/1981, the petitioner - defendant has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act').

2. Initially the present Revision Application was filed by the learned advocate Mr.M.B.Gandhi. Rule was ordered to be issued on 1st March, 1983. Interim stay of the execution of the decree for possession also was granted on condition, inter alia, that the petitioner shall deposit all the arrears of rent within four weeks from the date of the receipt of the writ and that he shall deposit future rent as it accrues due from time to time. However, when the matter came up for hearing, learned advocate Mr.Gandhi informed the Court that he had no contact with his client, the present petitioner. The petitioner had not responded to his written notice either. This Court (Coram : A.M.Kapadia, J.), therefore, on 22nd September, 1999, made order as under :

"Learned advocate Mr.M.B.Gandhi for the revision petitioner states that since admission of this revision petition he has not received any instruction from his client and hence he is not in a position to continue with the revision petition. He states that he has also given a notice of retirement to his client. In these circumstances he requests that he may be permitted to retire from the revision petition as an advocate for the revision petitioner. He has also placed on record a note dated 21st September, 1999 addressed to the Registrar of this Court wherein also he has sought permission for retiring from the revision petition as an advocate for the revision petitioner.

In this view of the matter, Mr.M.B.Gandhi, learned advocate, is permitted to retire as an advocate for the revision petitioner. Office is directed to delete his name as an advocate for the revision petitioner. The note filed by Mr.Gandhi shall be retained on record. Office is further directed to issue notice to the revision petitioner intimating the retirement of learned

advocate Mr.M.B.Gandhi as his advocate, returnable on 13th October, 1999."

Since the above order, the matter came up for hearing before this Court (Coram: Y.B.Bhatt, J.) on 12th June, 2000. The Court was pleased to dispose of the Revision Application as follows :

"From the earlier order passed by A.M.Kapadia, J. on 22nd September, 1999, it would appear that the petitioner has lost interest in the matter. It was for this reason that the learned counsel for the petitioner Shri M.B.Gandhi was permitted to retire from the said case. Thereafter the Registry had issued notice to the petitioner under orders of this Court dated 28th March, 200 and also order dated 27th April, 2000, which was made returnable on 8th May, 2000. Inspite of all these, the petitioner has remained unserved. It, therefore, appears that the petitioner has no further interest in the matter. This revision is accordingly disposed of. Rule is discharged with no order as to costs. Interim relief vacated."

After the above order was made the petitioner moved Misc. Civil Application No.2073/2000 for recalling the above referred order dated 12th June, 2000 through the very learned advocate Mr.M.B.Gandhi. The said application was allowed on 19th July, 2001. Thus, the Revision Application came to be restored on the files of this Court. After restoration, the matter has come up for hearing on several occasions. However, for want of appearance on behalf of the petitioner the matter has not been proceeded further. Moreover, the Courts have repeatedly ordered to issue fresh notice to the petitioner, none of which has returned back to the Court either served or unserved. It is very strange that notices issued by the Court shall not be returned to the Court for several years. Inspite of the application for restoration preferred by the applicant neither any appearance has been filed on behalf of the petitioner nor Mr.M.B.Gandhi, the learned advocate has appeared for the petitioner. Thus, the matter which has reached final hearing several years ago has not been heard for want of appearance on behalf of the petitioner.

3. I believe that the hearing of the matter need not be delayed further. Once the petitioner has filed the proceeding through the learned advocate, no fresh notice is required to be issued to the petitioner, more particularly when he is aware of the earlier order of

12th June, 2000 and he had also moved the above referred Misc. Civil Application No.2073/2000. It is, therefore, required to be presumed that the petitioner is aware of the pendency of the present proceedings but is not interested in proceeding further with the matter. I shall, therefore, proceed with the matter without waiting for the petitioner.

4. The plaintiff no.1, a partnership firm had rented a room in a building situated at Surat to the petitioner for a monthly rent of Rs.25=00. On dissolution of the said partnership firm, the said premises came to the share of the plaintiff no.2. Since the petitioner was in arrears of rent for more than six months the plaintiff no.2 gave suit notice on 4th July, 1978. Inspite of the said notice, the petitioner did not pay the amount of arrears of rent. The plaintiffs, therefore, instituted Rent Suit No.931/1978 in the Small Causes Court at Surat. The said suit was contested by the petitioner. He claimed that the contractual monthly rent of Rs.25=00 was excessive and that the petitioner was not liable to pay the permitted increases (i.e. the increase in the municipal taxes). The said suit was tried by the learned trial Judge. The learned trial Judge recorded a finding that the petitioner - defendant was in arrears of rent for more than six months. However, on the date of the judgment, the petitioner - defendant had paid up the arrears of rent. The learned Judge, therefore, was of the opinion that the petitioner was entitled to protection under Section 12(3)(b) of the Rent Act and was not liable to be evicted from the suit premises. The learned Judge also determined the standard rent at Rs.25=00 per month. Feeling aggrieved, the plaintiffs preferred Regular Civil Appeal No.275/1981 before the Joint Judge, Surat. The learned appellate Judge was pleased to record that though by the date of the judgment the petitioner - defendant had deposited the amount of arrears of rent in the Court, he had not deposited the rent regularly in the Court pending the suit. Even, pending the appeal the petitioner had not deposited the rent regularly as required. The learned Judge was, therefore, of the opinion that the petitioner was not entitled to protection under Section 12(3)(b) of the Rent Act. He accordingly allowed the appeal and passed decree for possession and also directed the petitioner to pay all the arrears of rent. The petitioner was allowed two years to vacate the suit premises. Feeling aggrieved, the petitioner - defendant has preferred the present Revision Application.

5. It is not disputed that as against arrears of

rent of Rs.1,350=00, the petitioner had deposited a sum of Rs.1,550=00 in the trial Court. However, the fact that the arrears of rent was not deposited regularly has not been refuted. Besides, even pending the appeal before the lower appellate Court, the petitioner did not make regular deposits as was required of him. Even pending this Revision Application, it appears that the petitioner has not deposited the amount of rent regularly. The petitioner has, in Misc. Civil Application No.2073/2000, made a statement, "that even during the pendency of this Revision Application, amounts are paid and recently also Rs.5,000=00 is deposited in the trial Court in original Suit No.931/1978." This statement is too vague i.e. it is not stated that the amount of rent has been deposited regularly. On the contrary, it shows that the petitioner has not deposited the amount of rent regularly and had deposited a sum of Rs.5,000=00 only after the Revision Application was dismissed on 12th June, 2000.

6. In above view of the matter it can not be gain said that the petitioner was in arrears of rent for more than six months on the date of the suit nor can it be said that he was always ready and willing to pay the rent so as to entitle him to the protection under Section 12(3)(b) of the Rent Act. I am, therefore, of the view that the learned appellate Judge was right in holding that the petitioner was not ready and willing to pay the rent regularly and in passing the decree for possession. The Revision Application is, therefore, dismissed. The judgment and order of the learned Joint Judge, Surat passed in Regular Civil Appeal No.275/1981 is confirmed. Rule is discharged with costs. Ad-interim stay stands vacated.

(Ms. R.M. Doshit, J.)

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